

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-170165
Plaintiff-Appellee,	:	TRIAL NO. B-0609733
vs.	:	<i>JUDGMENT ENTRY.</i>
RONALD HUSBANDS,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Ronald Husbands presents on appeal a single assignment of error challenging the Hamilton County Common Pleas Court’s judgment overruling his Crim.R. 32.1 motion to withdraw his no-contest pleas. We affirm the court’s judgment.

Husbands was convicted in 2007 upon no-contest pleas to possession of and trafficking in marijuana. He did not appeal his convictions.

In 2017, Husbands moved under Crim.R. 32.1 to withdraw his no-contest pleas. Citing the United States Supreme Court’s 2010 decision in *Padilla v. Kentucky*, 559 U.S. 356, 130 S.Ct. 1473, 176 L.Ed.2d 284 (2010), he argued that his pleas had been the unknowing and unintelligent product of his trial counsel’s ineffectiveness in advising him concerning the immigration consequences of his convictions. The common pleas court did not abuse its discretion in overruling that motion.

In *Chaidez v. United States*, 568 U.S. 342, 133 S.Ct. 1103, 185 L.Ed.2d 149 (2013), the Supreme Court, applying the principles set forth in *Teague v. Lane*, 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989), held that *Padilla* could not be applied retroactively to convictions that had become final before March 31, 2010, when the case was decided, because the case had announced a “new rule” when it answered an open question concerning the reach of the Sixth Amendment in a way that altered the law of most jurisdictions. *Chaidez* at 347-357. In *State v. Bishop*, 2014-Ohio-173, 7 N.E.3d 605 (1st Dist.), we followed *Chaidez* to hold that the court below had abused its discretion in retroactively applying *Padilla* to grant withdrawal of a no-contest plea, when the conviction resulting from that plea had become final before *Padilla* was decided. *See id.* at ¶ 11-17. *Accord State v. Bravo*, 2017-Ohio-272, 81 N.E.3d 919, ¶ 11-12 (9th Dist.); *State v. Brooks*, 7th Dist. Jefferson No. 14 JE 3, 2015-Ohio-836, ¶ 16-19; *State v. Spivakov*, 10th Dist. Franklin Nos. 13AP-32 and 13AP-33, 2013-Ohio-3343, ¶ 15.

Husbands’s convictions became final in April 2007, when the time for perfecting a direct appeal from his convictions had expired. *See Bishop* at ¶ 10 (citing *Teague* at 295, and *Agee v. Russell*, 92 Ohio St.3d 540, 751 N.E.2d 1043 (2001), for the proposition that a conviction becomes final when all appellate remedies have been exhausted). Because Husbands’s 2007 conviction had become final before the 2010 decision in *Padilla*, the common pleas court could not, consistent with *Chaidez* and *Bishop*, have allowed Husbands to withdraw his no-contest pleas based on a violation of the Sixth Amendment right announced in *Padilla*.

The decision on Husbands’s Crim.R. 32.1 motion to withdraw his no-contest pleas was discretionary with the common pleas court. And Husbands bore the burden of demonstrating that withdrawing his pleas was necessary “to correct manifest injustice.”

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Crim.R. 32.1; *see State v. Smith*, 49 Ohio St.2d 261, 361 N.E.2d 1324 (1977), paragraphs one and two of the syllabus; *State v. Brown*, 1st Dist. Hamilton No. C-010755, 2002-Ohio-5813. Thus, implicit in the court’s decision overruling the motion was its determination that Husbands had failed to sustain that burden. That determination cannot be said to have been arbitrary, unconscionable, or the product of an unsound reasoning process, because *Padilla* could not be applied retroactively to Husbands’s convictions. *See State v. Darmond*, 135 Ohio St.3d 343, 2013-Ohio-966, 986 N.E.2d 971, ¶ 34 (defining an “abuse of discretion”). We, therefore, hold that the court did not abuse its discretion in overruling the motion.

Accordingly, we overrule the assignment of error and affirm the court’s judgment.

A certified copy of this judgment entry constitutes the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., MYERS and MILLER, JJ.

To the clerk:

Enter upon the journal of the court on March 28, 2018

per order of the court _____.

Presiding Judge